

# HOUSE BILL No. 1291

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 10-11-2-21.5; IC 12-7-2; IC 12-31; IC 22-5-1.5.

**Synopsis:** Unauthorized aliens. Requires the superintendent of the state police department (superintendent) to: (1) negotiate terms of a memorandum of understanding (memorandum) concerning a pilot project for the enforcement of federal immigration and customs laws; and (2) designate appropriate law enforcement officers to be trained under the memorandum. Requires: (1) the superintendent and governor, unless otherwise required by the applicable federal agency, to sign the memorandum on behalf of the state; and (2) the state police department to apply for federal funding, if available, for the costs associated with training the law enforcement officers. Provides that a law enforcement officer certified as trained may enforce the federal immigration and customs laws. Prohibits a state agency or political subdivision from providing federal, state, or local public benefits to a person who is not a: (1) United States citizen; or (2) qualified alien under the federal Immigration and Nationality Act and lawfully present in the United States. Requires a state agency or a political subdivision to verify the lawful presence in the United States of each individual who: (1) is at least 18 years of age; and (2) applies for federal, state, or local public benefits administered by the agency or political subdivision. Requires a state agency or a political subdivision to: (1) verify the lawful presence of the person by requiring the person to execute a verified affidavit stating that the person is a United States citizen or a qualified alien; (2) verify the lawful presence of certain individuals through the Systematic Alien Verification of Entitlements (SAVE) program; and (3) report errors and significant delays in the SAVE program. Provides that: (1) a state agency or political

(Continued next page)

**Effective:** July 1, 2008.

**Eberhart, Dermody**

January 15, 2008, read first time and referred to Committee on Interstate and International Cooperation.



C  
o  
p  
y

subdivision may provide variations of the verification of lawful presence requirements; and (2) a person who makes a false, fictitious, or fraudulent statement of representation in an affidavit verifying lawful presence commits a Class D felony. Requires employers to: (1) comply with requirements regarding verification of employment under federal law; and (2) make verification forms available for inspection by the commissioner of labor. Requires the commissioner of labor to file a complaint with the United States Office of the Attorney General if an employer fails to retain or to make available for inspection a verification of each employee.

**C  
o  
p  
y**



Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

C  
O  
P  
Y

## HOUSE BILL No. 1291

---

A BILL FOR AN ACT to amend the Indiana Code concerning immigration.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 10-11-2-21.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2008]: **Sec. 21.5. (a) As used in this section,**  
4 **"law enforcement officer" means a:**  
5 (1) **police employee;**  
6 (2) **county sheriff;**  
7 (3) **county police officer;**  
8 (4) **county police reserve officer;**  
9 (5) **city police officer;**  
10 (6) **city police reserve officer;**  
11 (7) **town marshal;**  
12 (8) **deputy town marshal; or**  
13 (9) **member of a consolidated law enforcement department**  
14 **established under IC 36-3-1-5.1.**  
15 (b) **The superintendent shall negotiate the terms of a**



1 memorandum of understanding between the state and the United  
 2 States Department of Justice or the United States Department of  
 3 Homeland Security concerning a pilot project for the enforcement  
 4 of federal immigration and customs laws in Indiana.

5 (c) The memorandum of understanding described in subsection  
 6 (b) must be signed on behalf of the state by the superintendent and  
 7 the governor, unless otherwise required by the United States  
 8 Department of Justice or the United States Department of  
 9 Homeland Security.

10 (d) The superintendent shall designate appropriate law  
 11 enforcement officers to be trained under the memorandum of  
 12 understanding described in subsection (b).

13 (e) The department shall apply for federal funding, if available,  
 14 for the costs associated with training law enforcement officers  
 15 under the memorandum of understanding described in subsection  
 16 (b).

17 (f) A law enforcement officer certified as trained in accordance  
 18 with the memorandum of understanding described in subsection  
 19 (b) may enforce federal immigration and customs laws while acting  
 20 within the scope of the law enforcement officer's duties.

21 SECTION 2. IC 12-7-2-9, AS AMENDED BY P.L.93-2006,  
 22 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23 JULY 1, 2008]: Sec. 9. "Agency" means the following:

24 (1) For purposes of IC 12-10-12, the meaning set forth in  
 25 IC 12-10-12-1.

26 (2) For purposes of IC 12-12.7-2, the meaning set forth in  
 27 IC 12-12.7-2-1.

28 (3) For purposes of IC 12-31-1, the meaning set forth in  
 29 IC 12-31-1-1.

30 SECTION 3. IC 12-7-2-76.6 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 76.6. (a) "Emergency  
 32 medical condition", for purposes of IC 12-15-12, has the meaning set  
 33 forth in IC 12-15-12-0.3.

34 (b) "Emergency medical condition", for purposes of IC 12-31-1,  
 35 has the meaning set forth in IC 12-31-1-2.

36 SECTION 4. IC 12-7-2-85.1 IS ADDED TO THE INDIANA CODE  
 37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 38 1, 2008]: Sec. 85.1. "Federal public benefit", for purposes of  
 39 IC 12-31-1, has the meaning set forth in IC 12-31-1-3.

40 SECTION 5. IC 12-7-2-142 IS AMENDED TO READ AS  
 41 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 142. "Political  
 42 subdivision", for purposes of the following statutes, has the meaning

C  
o  
p  
y



set forth in IC 36-1-2-13:

(1) IC 12-8.

(2) IC 12-13-4.

**(3) IC 12-31-1.**

SECTION 6. IC 12-7-2-169.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 169.7. "SAVE program", for purposes of IC 12-31-1, has the meaning set forth in IC 12-31-1-4.**

SECTION 7. IC 12-7-2-185.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 185.5. "State or local public benefit", for purposes of IC 12-31-1, has the meaning set forth in IC 12-31-1-5.**

SECTION 8. IC 12-31 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

**ARTICLE 31. RESTRICTIONS ON PUBLIC BENEFITS**

**Chapter 1. Restrictions on Public Benefits to Illegal Aliens**

**Sec. 1. As used in this chapter, "agency" means any state administration, agency, authority, board, bureau, commission, committee, council, department, division, institution, office, service, or other similar body of state government.**

**Sec. 2. As used in this chapter, "emergency medical condition" has the meaning set forth in 42 U.S.C. 1396b(v)(3).**

**Sec. 3. As used in this chapter, "federal public benefit" has the meaning set forth in 8 U.S.C. 1611.**

**Sec. 4. As used in this chapter, "SAVE program" means the Systematic Alien Verification of Entitlements program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security.**

**Sec. 5. As used in this chapter, "state or local public benefit" has the meaning set forth in 8 U.S.C. 1621.**

**Sec. 6. This chapter shall be enforced without regard to race, religion, gender, ethnicity, or national origin.**

**Sec. 7. Except as provided in section 9 of this chapter or in federal law, an agency or a political subdivision may not provide federal public benefits or state or local public benefits to an individual who is not:**

**(1) a United States citizen; or**

**(2) a qualified alien under the federal Immigration and Nationality Act who is lawfully present in the United States.**

**C  
o  
p  
y**



1       **Sec. 8. Except as provided in section 9 of this chapter or in**  
 2       **federal law, an agency or a political subdivision shall verify, in the**  
 3       **manner provided in section 10 of this chapter, the lawful presence**  
 4       **in the United States of each individual who:**

5           **(1) is at least eighteen (18) years of age; and**

6           **(2) applies for:**

7               **(A) federal public benefits; or**

8               **(B) state or local public benefits;**

9           **that are administered by the agency or political subdivision;**  
 10          **before the agency or political subdivision may provide federal**  
 11          **public benefits or state or local public benefits to the individual.**

12       **Sec. 9. An agency or a political subdivision is not required to**  
 13       **meet the requirements of sections 7 and 8 of this chapter for any of**  
 14       **the following:**

15           **(1) A purpose for which lawful presence in the United States**  
 16           **is not required by law, ordinance, or regulation.**

17           **(2) Assistance for health care items and services that are**  
 18           **necessary for the treatment of an emergency medical**  
 19           **condition of the individual involved and are not related to an**  
 20           **organ transplant procedure.**

21           **(3) Short term, noncash, in-kind emergency disaster relief.**

22           **(4) Public health assistance for:**

23               **(A) immunizations with respect to a disease for which an**  
 24               **individual may be immunized; and**

25               **(B) testing and treatment of symptoms of communicable**  
 26               **diseases regardless of whether symptoms are caused by a**  
 27               **communicable disease.**

28           **(5) Programs, services, or assistance, including soup kitchens,**  
 29           **crisis counseling and intervention, and short term shelter,**  
 30           **specified by the United States Attorney General in the United**  
 31           **States Attorney General's sole and unreviewable discretion**  
 32           **after consultation with appropriate federal agencies and**  
 33           **departments, that:**

34               **(A) deliver in-kind services at the community level,**  
 35               **including services through public or private nonprofit**  
 36               **agencies;**

37               **(B) do not condition the:**

38                   **(i) provision of assistance;**

39                   **(ii) amount of assistance provided; or**

40                   **(iii) cost of assistance provided;**

41               **on a recipient's income or resources; and**

42               **(C) are necessary for the protection of life or safety.**

**C**  
**O**  
**P**  
**Y**



**(6) Prenatal care.**

**Sec. 10.** An agency or a political subdivision shall verify the lawful presence in the United States of an individual described in section 8 of this chapter by requiring the individual to execute a verified affidavit stating that the individual is:

(1) a United States citizen; or

(2) a qualified alien under the federal Immigration and Nationality Act who is lawfully present in the United States.

**Sec. 11. (a)** If an individual executes an affidavit under section 10 of this chapter stating that the individual is a qualified alien lawfully present in the United States, an agency or a political subdivision shall verify the lawful presence of the individual to determine eligibility for federal public benefits or state or local public benefits through the SAVE program.

(b) An affidavit executed under section 10 of this chapter may be presumed to be proof of an individual's lawful presence in the United States under this chapter until eligibility is verified under this section.

**Sec. 12.** An agency or a political subdivision shall report any errors or significant delays by the SAVE program to the:

(1) United States Department of Homeland Security; and

(2) secretary of state.

**Sec. 13.** An agency or a political subdivision may adopt a variation of the requirements set forth in this chapter to:

(1) improve the efficiency of verifying an individual's lawful presence in the United States under this chapter;

(2) reduce delay in verifying an individual's lawful presence in the United States under this chapter; or

(3) provide for an adjudication in the case of unique individual circumstances under which the procedures set forth in this chapter would impose unusual hardship on a legal resident of Indiana.

**Sec. 14.** A person who knowingly or intentionally makes a false, fictitious, or fraudulent statement of representation in an affidavit executed under section 10 of this chapter commits a Class D felony.

**Sec. 15.** An agency may adopt rules and a political subdivision may adopt an ordinance or a resolution to carry out the requirements of this chapter.

SECTION 9. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

**Chapter 1.5. Verification for Employment**

**C  
O  
P  
Y**



1       Sec. 1. As used in this chapter, "commissioner" refers to the  
2 commissioner of labor or the commissioner's authorized agent.

3       Sec. 2. As used in this chapter, "unauthorized alien" has the  
4 meaning set forth in 8 U.S.C. 1324a(h).

5       Sec. 3. An employer shall comply with the requirements  
6 regarding verification under 8 U.S.C. 1324a of the United States  
7 Immigration and Nationality Act.

8       Sec. 4. An employer shall:

9       (1) retain a verification form of each employee as required  
10 under 8 U.S.C. 1324a; and

11       (2) make the verification forms described in subdivision (1)  
12 available to the commissioner upon request.

13       Sec. 5. The commissioner shall file a complaint with the United  
14 States Office of the Attorney General under 8 U.S.C. 1324a(e) if an  
15 employer fails to retain or make available for inspection a  
16 verification of each employee as required under 8 U.S.C. 1324a and  
17 section 4 of this chapter.

C  
o  
p  
y

